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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 861

ILLINOIS COMMERCE COMMISSION,
Appellant,

vs.

HENRY A. SCANDRETT, WALTER J. CUMMINGS, GEORGE I. HAIGHT, TRUSTEES OF THE PROPERTY OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT OPPOSING JURISDICTION

CARSON L. TAYLOR,
LARRY H. DUGAN,
Counsel for Appellees.

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APPEAL FROM SUPREME COURT OF ILLINOIS.

STATEMENT IN OPPOSITION TO JURISDICTIONAL STATEMENT OF APPELLANT

Come now the appellees in the above entitled cause, by their counsel of record, and, pursuant to Rule 12 (3) of the Rules of this Court, present this statement in opposition to appellant's assertion that the instant case presents a jurisdictional question to this Court. In support thereof appellees respectfully state:

I

The final judgment and decision of the Supreme Court of Illinois does not draw into question the validity of a treaty or statute of the United States and there is, therefore, no decision against the validity of such treaty or statute.

II

Contrary to the assertion of appellant, the case does not draw into question the validity of a statute of the State of Illinois on the ground of its being repugnant to the Constitution, treaties, or laws of the United States.

III

The case presents no substantial Federal question.

The confusing and involved jurisdictional statement of appellant requires careful analysis to determine the questions which appellant claims are involved and which would permit an appeal under Section 237 of the Federal Judicial Code (U. S. Code Ann., Title 28, Sec. 344). If the questions were simply presented, the want of applicability of this statute authorizing an appeal would be readily apparent. Bared of all of the confusing language, we understand the appellant to claim:

1. The Illinois Public Utilities Act is in conflict with the provisions of the Emergency Price Control Act of 1942.

2. The Illinois Public Utilities Act is repugnant to the Fourteenth Amendment to the Constitution in that as construed by the Supreme Court of Illinois it deprives patrons of the railroad of their property, without due process of law.

These points will briefly be dealt with in order to demonstrate that no substantial Federal questions are involved and that nothing is here presented from which an appeal is authorized by the provisions of Section 237 of the Federal Judicial Code (U. S. Code Ann., Title 28, Sec. 344).

Before discussing questions raised by appellant, and so that this Court will understand the nature of the case which the appellant seeks here to have reviewed, we make the following preliminary statement:

Preliminary Statement

The Appellees, Trustees of the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, having been so appointed by the United States District Court for the Northern District of Illinois, Eastern Division, in a proceeding entitled "In the Matter of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, No. 60463", operate a suburban passenger service in the Chicago metropolitan area. This service has been operated at a loss for many years. Effective the 10th day of February, 1942, the appellees increased their single and round-trip suburban fares by ten per cent, which increases are still in effect. By schedules filed with the Illinois Commerce Commission on the 5th day of February, 1942, these appellees proposed increases in their intrastate commutation (multiple-ride) fares applicable within the Chicago area. The latter increases were suspended by the Illinois Commerce Commission until January 6, 1943, and subsequently—on March 23, 24, and June 9, 1942—hearings were held on the reasonableness and lawfulness of the proposed increases in fares. On the last named date, the case was marked "heard and taken". By opinion and order dated November 24, 1942 (served on appellees December 7, 1942), the Illinois Commerce Commission denied these appellees the right to make

the proposed increases, and the schedules proposing said increases were cancelled pursuant to said order. In denying the increases, the Commission, to support its order, made the following findings:

> "(a) that the Commission has jurisdiction of the subject matter of this cause and of the parties hereto;
>
> (b) that the rates involved herein and in effect March 7, 1942 are just and reasonable;
>
> (c) that the proposed rates under suspension in this proceeding are unjust and unreasonable and in violation of the Public Utilities Act of Illinois."

In the interim between the closing of the record in the proceeding and the decision of the Commission denying the proposed increases, the 1942 amendment to the Emergency Price Control Act was passed by Congress, October 2, 1942, which provided that no common carrier should make any general increase in rates without first giving thirty days' notice to the President, or such agency as he might designate, and with consent to the timely intervention of such agency before the Federal, State, or municipal authority having jurisdiction to consider such increase. Whether or not a notice of these proposed increases was served on the Office of Price Administration prior to the date of the Commission's report and order is unimportant, wholly immaterial, and raises no legal question in this proceeding, for no increases were authorized but on the contrary, permission to increase the rates was denied by the Commission, for the reasons set forth in the findings above quoted. Had the Office of Price Administration intervened it could not have secured a more favorable result, and the agency was notified, with consent to intervention, of the further efforts of appellees to secure the increases.

Following the denial of the proposed increases by the Illinois Commerce Commission, and within the time re-

quired by the Illinois statutes, appellees filed their petition for rehearing and gave notice to the Office of Price Administration, reciting consent to its intervention. The petition for rehearing was denied and within the time required by the Illinois statutes, appellees appealed to the Circuit Court of Cook County, Illinois, and again gave notice to the Office of Price Administration, with the recital of consent to intervention. The Office of Price Administration did not elect to intervene either in the proceeding before the Commission or on the appeal to the court. At Page 10 of appellant's Jurisdictional Statement, it is stated:

> "In each of these cases, the Price Administrator asked leave to intervene in the Supreme Court of Illinois as *amicus curiae*. In each of these cases the Supreme Court of Illinois denied this leave."

This statement is typical of the loose and inaccurate way appellant has dealt with the facts and the law, in its statement. The Price Administrator made no attempt to intervene in this case before the Illinois Supreme Court as *amicus curiae*, or for any other purpose.

With this brief statement of the facts, we will now briefly discuss the issues as raised by the appellant.

I

The Illinois Public Utilities Act Is Not in Conflict With the Provisions of the Emergency Price Control Act of 1942.

The appellant states that the Illinois Public Utilities Act as construed by the Supreme Court of Illinois is in conflict with the provisions of the Emergency Price Control Act of 1942. The Illinois Public Utilities Act as construed by the Supreme Court of Illinois is the law of Illinois, as all Illinois statutes mean what the Supreme Court of Illinois

says they mean. This Court has always accepted the interpretation which the Supreme Court of the State makes of the State statutes.

In what respect does the appellant claim that the Illinois Public Utilities Act is in conflict with the Emergency Price Control Act of 1942? It is, indeed, difficult to follow the reasoning of the appellant, and the conclusion that a conflict exists is reached by conjuring imaginary situations which have no relation to the facts and legal questions presented in this case. After quoting the provisions of the 1942 amendment to the Emergency Price Control Act, which requires the service of a 30-days' notice before any common carrier shall make any general increase in its rates, the appellant, in its statement, recites that the evidence in the proceeding was submitted to the Illinois Commerce Commission and the record was closed before September 15, 1942 (the record was closed June 9, 1942). It then states that notwithstanding the fact that the applications for increased rates were pending before the Commission at the time the Act in question was passed, none of the railroads *made it appear of record* that they had notified the Price Administrator of their intent and that they consented to his intervention before the Commission.* It is to be noted that the appellant nowhere claims that the Price Administrator was not notified; it only claims that the Illinois Commerce Commission was not notified of the notice to the Price Administrator.

Next, appellant states that the Illinois Commerce Commisssion construed the 1942 amendment to the Emergency Price Control Act as to make the Price Administrator an indispensable party to the proceeding, at least to the extent

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* The facts were, these appellees twice notified the Price Administrator of their intent and consented to his intervention—once at the time petition for rehearing was filed before the Illinois Commerce Commission, and again when appeal was perfected to the Circuit Court of Illinois at Chicago. On neither occasion did the Price Administrator take any action.

that he must be notified. There is nothing in the Commission's report and order to support this statement. The report and order of the Commission in this case, while noting that the Commission's record did not show whether notice had been served, denied the proposed increases, not because the Commission's record failed to show that the Price Administrator had been notified, but because the existing rates were found to be just and reasonable, and the proposed rates were found to be unjust and unreasonable. The Commission made no finding that the Office of Price Administration was an indispensable party or that its jurisdiction was dependent upon the service of the notice as required by the 1942 amendment to the Emergency Price Control Act. Obviously the Commission could not have reached any result more favorable to the Office of Price Administration had it intervened and opposed the increases, for the increases were denied.

Next it is contended that the Commission had a right to insist that it be notified that the carrier had served the notice required by the 1942 amendment to the Emergency Price Control Act. That question is not present in this case. We do not here question the right of the Illinois Commerce Commission to require by rule that proof of service of the notice required by the Emergency Price Control Act of 1942 be furnished to the Commission. Certainly the Supreme Court of Illinois has not held that the Commission had no right to insist that it be notified of the service of the notice on the Office of Price Administration. The Commission had promulgated no such rule or requirement and any issue as to whether or not such a rule was appropriate is not an issue and was not passed upon by the court. All the Supreme Court of Illinois did with regard to the construction of the 1942 amendment to the Emergency Price Control Act was to quote from and follow the deci-

sion of this Court in *Vinson* v. *Washington Gas Light Co.*, 321 U. S. 489, where the court said, on page 499:

> "We are asked * * * to infer from a general expression of congressional policy the limitation of existing powers conferred by law on regulatory commissions throughout the nation, both state and federal, and the endowment of a different federal agency with new and superior rights and powers. This we are unable to do."

An examination of the Illinois Supreme Court's opinion attached to appellant's Jurisdictional Statement will indicate clearly that the Illinois Supreme Court simply accepted the interpretation and construction which this Court had placed on the amendment.

We must reiterate that in this proceeding the appellant is complaining, not that no notice of the proceeding was given the Office of Price Administration, but that the Commission was not informed that the notice had been served. The Office of Price Administration is not here asserting any failure on the part of appellees to furnish it with timely notice. We submit that this first contention of appellant presents no Federal question.

II

The Illinois Public Utilities Act as Construed by the Supreme Court of Illinois Is Not Repugnant to the Fourteenth Amendment to the Constitution and Does Not Deprive Patrons of the Railroad of Their Property Without Due Process of Law.

The appellant modestly asserts:

> "We (Illinois Commerce Commission) seek to present, for the first time, * * * the contention that where the carriers fail to present substantial evidence

justifying an increase, to set at naught an order denying such an increase, is to impose upon the carrier's patrons a confiscatory high rate."

There are so many obvious answers to the suggestion that the due process clause of the Fourteenth Amendment to the Federal Constitution is violated by the Illinois Public Utilities Act as interpreted by the Illinois Supreme Court that we will not burden this Court with an extended discussion.

In the first place, the court held that there was substantial evidence presented at the hearing before the Commission justifying an increase in rates, and, of course, there was no suggestion that the Commission could or should authorize rates to be increased in the absence of evidence. Second, no patron is deprived of his property by the statute as interpreted by the Supreme Court. The patron is free to use or to refuse to use the service offered. And next, it is the Illinois Commerce Commission, an agency of the State, and the Attorney General, who are urging that the Illinois Public Utilities Act as interpreted by the Illinois Supreme Court is unconstitutional.

It certainly is well settled that the jurisdiction of this Court cannot be invoked where the constitutionality of a State statute is attacked by the State itself, its officers or agencies, or by anyone who does not have a personal interest in the litigation. The question as to whether or not the State, a State agency, or officer may question the constitutionality of a State statute in the State courts is a local question, and this Court has consistently held that the constitutionality of a State statute cannot be so raised here. This familiar rule is stated in *Smith* v. *Indiana*, 191 U. S. 138, 148:

"Different considerations, however, apply to the jurisdiction of this court, which we have recently held

can only be invoked by a party having a personal interest in the litigation. It follows that he cannot sue out a writ of error in behalf of third persons. *Tyler* v. *Judges of Court of Registration,* 179 U. S. 405; *Clark* v. *Kansas City,* 176 U. S. 114; *Turpin* v. *Lemon,* 187 U. S. 51; *Lampasas* v. *Bell,* 180 U. S. 276; *Ludeling* v. *Chaffe,* 143 U. S. 301; *Giles* v. *Little,* 134 U. S. 645. These authorities control the present case. It is evident that the auditor had no personal interest in the litigation. He had certain duties as a public officer to perform. The performance of those duties was of no personal benefit to him. Their nonperformance was equally so. He neither gained nor lost anything by invoking the advice of the Supreme Court as to the proper action he should take. He was testing the constitutionality of the law purely in the interest of third persons, *viz.,* the taxpayers, and in this particular the case is analogous to that of *Caffrey* v. *Oklahoma,* 177 U. S. 346. We think the interest of an appellant in this court should be a personal and not an official interest, and that the defendant, having sought the advice of the courts of his own State in his official capacity, should be content to abide by their decision."

Pertinent is the language of the court in *Columbus & G. Ry. Co.* v. *Miller,* 283 U. S. 96, where we find, on page 99, the following:

"The question as to the validity of the Act of 1926 is raised only by the State Tax Collector in his official capacity, as one acting solely under the authority of the legislature whose requirement he contests. The only person taxed by the statute whose rights are before the Court is the petitioner, which seeks to uphold the state legislation which defines its liability and with which it has complied. The questions which the Collector sought to raise under the state constitution have not been passed upon by the state court. While, so far as state practice is concerned, the authority of a public officer to assail in the courts of the State the constitutional validity of a state

> statute is a local question, this fact does not alter the fundamental principle, governing the determination of the federal question by this Court, that the protection of the Fourteenth Amendment against state action is only for the benefit of those who are injured through the invasions of personal or property rights or through the discriminations which the Amendment forbids. The constitutional guaranty does not extend to the mere interest of an official, as such, who has not been deprived of his property without due process of law or denied the equal protection of the laws."

"A litigant can be heard to question a statute's validity only when and so far as it is being or is about to be applied to his disadvantage" where he seeks to have this Court pass upon the constitutionality. *Utah Power & Light Co.* v. *Pfrost*, 286 U. S. 165, 186.

The proposition urged by the appellant is frivolous and presents no question entitling it to be heard on appeal.

Conclusion

The Supreme Court of Illinois has here held that the Illinois Commerce Commission has failed to observe the limitations on its powers and the legislative standards fixed by the Illinois Public Utilities Act for the conduct of fair hearings.

The questions presented are purely local. The case as presented is not one in which an appeal is authorized from a State Supreme Court by the provisions of Section 237 of the Federal Judicial Code (U. S. Code Ann. Title 28, Sec. 344).

Respectfully submitted,

CARSON L. TAYLOR,
LARRY H. DUGAN,
Attorneys for Appellees.